

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

SCCI, INC., a Delaware Corporation

Plaintiff,

v.

Case No: 5:20-cv-348-Oc-30PRL

KENNY RUSSELL,

Defendant.

ORDER

On November 25, 2020, Plaintiff filed the instant motion for Clerk's default against Defendant Kenny Russell. (Doc. 14).


Pursuant to Federal Rule of Civil Procedure 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." However, before a clerk's default can be entered, the serving party must establish that the defaulting party was properly served. *Laing v. Cordi, III*, No. 2:11cv-566-FtM-29SPC, 2012 WL 4828312 at *1 (M.D. Fla. Oct. 10, 2012); *Manheim Automotive Fin., Servs., Inc. v. Information Matrix Tech., Inc.*, No. 2:12-cv-360-FtM-29-SPC, 2012 WL 3947207 at *1 (M.D. Fla. Sept. 10, 2012).

The court directed Plaintiff to provide a written response to address whether service of process was properly perfected upon Defendant in accordance with the provisions of the Hague Service Convention. Plaintiff filed a legal opinion of a member of the Israeli Bar that outlines the acceptable service procedures of the Hague Service Convention in Israel. (Doc. 27).

On December 28, 2020, Defendant's counsel filed a motion to dismiss (Doc. 23) and on December 29, 2020, filed a motion to quash subpoenas. (Doc. 25). "Where a defendant appears

and indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default, in accordance with the policy of allowing cases to be tried on the merits.” *Marschauser v. Travelers Indem. Co.*, 145 F.R.D. 605, 610 (S.D. Fla. 1992). Although the motion to dismiss is untimely, the defendant is defending this action. Accordingly, and in accordance with the judicial preference for a decision on the merits, Plaintiffs’ motion for Clerk’s default (Doc. 14) is **DENIED**. Additionally, Plaintiff’s motion to strike Defendant’s motion to dismiss (Doc. 28) is also due to be **DENIED**.

DONE and **ORDERED** in Ocala, Florida on January 12, 2021.



PHILIP R. LAMMENS
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties